

**Drawing Amendments:**

Applicant submits replacement drawing sheet 5 for current drawing sheet 1.

Applicant submits replacement drawing sheet 6 for current drawing sheet 2.

Applicant submits replacement drawing sheet 7 for current drawing sheet 3.

Applicant submits replacement drawing sheet 8 for current drawing sheet 4.

## **REMARKS**

### **Claim Rejections**

Claims 1-4 are pending in this Application. Claims 1-4 were rejected by the Examiner. Applicant has amended claims 1-3. Applicant has cancelled claim 4.

### **Objections to Applicant's Drawings**

Examiner argues that Applicant has failed to comply with 37 C.F.R. 1.83(a), because figure 1 and figure 4 are too dark. Replacement drawing sheets for figures 5 thru 8 have been submitted to replace original drawing sheets 1 thru 4 respectively.

All amendments and new figures are fully supported by the specification and no new matter has been added. The Examiner is respectfully requested to reconsider the rejection of this application in light of the foregoing remarks.

### **35 U.S.C. §102(b)**

#### **Claims 1 and 2 are anticipated by Schera, Jr.**

The Examiner rejected claims 1 and 2 under 35 U.S.C. §102(b) as being anticipated by Schera, Jr. (3,786,847). In making the rejection, the Examiner stated that:

Schera, Jr. discloses a novel grounding rod driver comprising: a steel, conically shaped member (2) having a distal opening (3) at its narrow end and axially extending channel through its center so as to facilitate attachment to the striking end of a grounding rod (8); and anvil member (4) affixed to the proximal

wide end of the conical member (2); a handle (5) affixed to the conical shaped member (2) to hold and support the driver.

For a 35 U.S.C. §102 rejection, it is well established case law that "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Though structurally similar in many ways, and sharing the common goal of installing electrical grounding rods, the Safety Sledge-Hammer disclosed in the Schera, Jr. reference and the Electrical Grounding Rod Driver described in the present invention are patentably distinct devices. The most important distinction being that the present invention is not a hammer; rather it is a device that allows two individuals to safely drive a grounding rod into the earth with the additional use of a sledge-hammer or similar tool. The present invention has two primary functions: first, it allows one person to safely hold the grounding rod in position to be installed. Secondly, the anvil portion of the present invention provides a larger target than the end of the grounding rod to strike with a sledge-hammer or similar tool. The present invention is not long enough nor does it have sufficient mass to be used as a sledge-hammer.

The invention claimed by the Schera reference is a modified sledge-hammer. The purpose of the Schera device is, "to avoid outside misses dangerous to the person temporarily holding the rod." This is basically the same

purpose as that of the present invention. The difference being that Schera, Jr, attempts to solve the problem by modifying the hammer used to drive the rod. Its conical cavity is intended to guide the grounding rod into the hammer's head during the impact of each swing preventing misses or glancing blows which could cause either the hammer or rod to deflect uncontrollably. By contrast, the present invention is removably attached to the top of the grounding rod and is not removed until the rod has been driven to a sufficient depth where it is secure and no longer needs to be held.

The dissimilar functions performed by the two devices is evident from the distinguishing design features of each device. The examiner states that Schera, Jr. discloses a, "conically shaped member (2) having a distal opening (3) at its narrow end and axially extending channel through its center so as to facilitate attachment to the striking end of a grounding rod." However, Schera does not disclose a "conical member," rather it discloses a sledge-hammer having a conical opening on one end. Furthermore, the Schera, Jr. reference does not disclose a distal opening at its narrow end, rather it has the opening at its wide end as can plainly be seen in Schera, Jr.'s Figure 3. The obvious reason for Schera's design is to guide the end of the grounding rod into the head of the hammer making a miss less likely. The present invention has the opening at the narrow end because it is not being swung at the grounding rod, but rather it is being removably attached to the grounding rod so that the present invention itself may be struck with a sledge-hammer or similar device. The examiner goes on to state that Schera, Jr. discloses an, "anvil member (4) affixed to the proximal wide

end of the conical member. However, Schera, Jr.'s Figure 3 clearly shows that the so called "anvil member" (4) is affixed closest to the narrow end of the conical opening (3). The examiner also states that Schera, Jr. discloses, " a handle (5) affixed to the conical shaped member (2) to hold and support the driver." As discussed above, the Schera device does not have a "conical member" and the handle is not attached to the conical opening as can be seen in Schera, Jr.'s Figures 2, 3 and 5.

As mentioned above, the present invention is much smaller and lighter than a typical sledge-hammer. The obvious reason being that the present invention does not need the momentum required to drive a grounding rod into the ground. A regular sledge-hammer, used in conjunction with the present invention, provides the necessary momentum required to install the grounding rod. Additionally, it would be dangerous to try to use Schera, Jr.'s modified sledge-hammer as a substitute for the present invention. The Schera device is heavy making it more difficult to hold in place and potentially dangerous if it were to become unattached from the grounding rod, because its weight would make it harder to control. Secondly, the concave conical cavity would allow the head of the Schera device to rotate within the cavity defeating its ability to hold the grounding rod steady when being struck with a hammer, etc. Lastly, the distance between the end of the conical cavity and the "opposite end surface" of the Schera device (which would presumably act as the anvil) is several inches, which would also add to instability when being struck by another sledge-hammer.

In sum, the present invention is not a hammer such as the Schera, Jr. device. The present invention is a device designed to safely hold a grounding rod in place while it is being driven into the ground. Schera, Jr.'s device was not designed to be used in the same manner as the present invention and the present invention could not be used as a replacement for the Schera, Jr. device.

For all of the reasons mentioned above, Applicant's invention, as claimed in amended independent claim 1, is patentably distinct from the Safety Sledge-Hammer described by Schera, Jr. Applicant's currently amended dependent claim 2, which depends from Applicant's patentable independent claim 1 is therefore patentable for at least the same reasons as applicant's patentable independent claims 1.

**35 U.S.C. §103(a)**

**Claim 3 over Schera, Jr. in view of McCabe et al.**

The Examiner rejected claim 3 under 35 U.S.C. §103(a) as being anticipated by Schera, Jr. (3,786,847) in view of McCabe et al. (5,954,143).

In making the rejection, the Examiner stated:

Regarding claim 3, Schera, Jr. discloses a grounding rod driver made of steel, not of titanium. McCabe et al. teaches that it is known to make ground drivers out of titanium. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the grounding rod driver of Schera, Jr. of titanium, as taught by McCabe et al. since McCabe et al. states at column 7 line 4-10 that the use of titanium for ground drivers would be desirable to reduce weight of the driver.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. §103, the Examiner must demonstrate that there is a suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine the reference teachings. Furthermore, the prior art references must teach or suggest all of the claimed features. It is well settled law that the prior art itself must provide the motivation for a proposed alteration of a reference. Ex parte Chicago Rawhide Manufacturing Co., 220 U.S.P.Q. 351, (B.O.P.A. 1984). Moreover, the suggestion must be plain and clear or the rejection is untenable. Fromson v. Offset Plate, Inc., 225 U.S.P.Q. 26, 32 (Fed. Cir. 1985); Kimberly-Clark Corp. v. Johnson & Johnson, 223 U.S.P.Q. 603, 610 (Fed. Cir. 1984). The Examiner is not free to pick bits and pieces from the prior art and, with the hindsight benefit of applicants' disclosure, attempt to reconstruct the invention. Orthopedic Equipment, Inc. v. U.S., 217 U.S.P.Q. 193, 199 (Fed. Cir. 1983).

Examiner's argument, that making the present invention from titanium is obvious in view of McCabe et al., relies on the present invention's general form being disclosed by the Schera, Jr. reference. However, as discussed in detail above, the Schera device is patentably distinct from the present invention. The obviousness of making the present invention from titanium should be re-evaluated in light of the argument that it is a patentably distinct invention from that described in the Schera, Jr. reference. Therefore, Applicant's currently amended dependent claim 3, which depends from Applicant's patentable independent claim 1, is

patentable for at least the same reasons as applicant's amended patentable independent claim 1 described in the 35 U.S.C. §102 section above.

**35 U.S.C. §103(a)**

**Claim 4 by Kozak in view of Tucker**

The Examiner rejected claim 4 under 35 U.S.C. §103(a) as being anticipated by Kozak (6,588, 514) in view of Tucker (5,934,139).

In making the rejection, the Examiner stated:

In reference to claim 4, Kozak discloses a novel grounding rod driver comprising: a conically shaped member (10; figures 1 & 3) having a distal opening (21) at its narrow end and axially extending through its center so as to facilitate attachment to the striking end of a grounding rod (42); a disk shaped anvil member (30) affixed to the proximal wide end of the conical member (10); a handle (figure 6) affixed to the conical shaped member (10) to hold and support the driver. The handle of Kozak is not pivotable. Tucker teaches that it is known to pivotably mount (42) a handle (40) to a ground rod driver (10). It would have been obvious to one having ordinary skill in the art at the time of the invention to include a pivotable handle on the grounding rod driver of Kozak, as taught by Tucker, since Tucker states at column 5 lines 45-51 that such a modification would allow the operator to optional utilize the handle.

Applicant's dependent claim 4 has been cancelled.

### CONCLUSION

In view of the foregoing amendments and remarks, it is believed that this Application is now in condition for allowance. Early and favorable reconsideration is respectfully solicited.

If the Examiner has any questions regarding the foregoing amendment and remarks, or if prosecution of this Application could be furthered by a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney.

Respectfully submitted,

By: Shawn R. Farmer  
SHAWN R. FARMER  
Reg. No. 56,533

Date: December 22, 2005

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550 TOWNSHIP LINE RD.  
SUITE 400  
BLUE BELL, PA 19422  
(610)-680-2301



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

re Non-provisional patent application of

Dwayne Saxon

Group Art Unit: 3721

Application No: 10/690,209

Examiner Name: Gloria R. Weeks

For: ELECTRICAL GROUNDING ROD DRIVER

Filing Date: October 21, 2003

Mailing Date of

Office Action: June 27, 2005

**CERTIFICATE OF MAILING**

Commissioner for Patents  
P.O. Box 1450  
Arlington, VA 22313-1450  
Mail Stop Response

**Date of Deposit: December 22, 2005**

I hereby certify that this Response to Office Action and fee are being deposited with the United States Postal Service via First Class Mail on the date indicated above, addressed to Commissioner for Patents, P.O. Box 1450, Arlington, VA 22313-1450, Mail Stop Response.

  
SHAWN R. FARMER

Date: December 22, 2005

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550 TOWNSHIP LINE RD.  
SUITE 400  
BLUE BELL, PA 19422  
(610)-680-2301